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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,350	07/03/2002	Timothy R. Hawes	71234-46	9613

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/064,350

Applicant(s)

HAWES, TIMOTHY R.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **Oath/Declaration**

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not identify the citizenship of each inventor.

The examiner notes that the declaration papers submitted to the Office appear to lack the rightmost portion of the text thereof, and as such the location of the field in which citizenship information would have been entered is not included on the submitted pages.

### **Claim Objections**

2. Claims 1, 6, 9, 11, 12, 17, 18, 19 and 20 are objected to because of the following informalities: In claim 1, line 9, there appears to be a word missing between “about” and axis”; in claim 11, the claim has been written to depend from itself. In the absence of other evidence, claim 11 is assumed dependent from claim 10. In claims 6, 9, 12, 17, first line, “he” should be --The--; in claims 18, 19, first line, “1he” should be --The--; in claim 20, first line “2he” should be --The--. Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

3. Claims 1-30 and 36-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4, the recitation “relatively linear” is confusing in that no element or formation to which the relativity is being claimed is set forth (i.e., relative to what particular element?); in claim 11, there is no clear antecedent for a ‘plate’, although it appears that the recitation may be directed to the base of claims 5, 8, 10, etc. In claim 36, the recitation of “the openings” lacks a clear antecedent basis (note that claim 33 refers to fasteners extending through brackets, but does not clearly recite openings); in claims 37 and 38, the recitation of second openings is confusing in that no “first openings” have been clearly recited—also note claim 44); in claims 45-48, the references to a nut and a bolt appear to lack a clear antecedent basis (again note claim 33, which refers to a fastener, but recites no details to a nut or bolt;

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further note claim 51, which appears to provide antecedent bases for aligned openings in both brackets, a bolt and a nut, however claims 36-50 do not depend from claim 51).

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10, 13, 14, 25, 26, 27, 31, 32, 33 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zieske (US 5,950,975, cited by applicant) in view of Laubach (US 5,895,064). Zieske teaches a fender mount and bracket system for a vehicle having a longitudinal frame (figure 2) and inherently understood to include ground-engaging support wheels on lateral sides of the frame, including a fender (40) of 'relatively linear' cross section, with upper and lower surfaces, and an elongated support arm (20a, 20b) mounted to one of the upper and lower surfaces of the fender, having a longitudinal axis (25) and a bracket (24, 26) mounted to the arm, having a connection to the frame (28, 42) which may be replaced with a threaded aperture which receives a bolt (see col. 4, lines 15-23), the frame connection allowing rotation about a further longitudinal axis (48) spaced a fixed distance from the first longitudinal axis (25), further including a ring clamp connection (30: 32, 34, 36, 38) which connects a bracket (e.g., 32) to the arm (at 20a), the ring clamp and arm having complimentary sized circular dimensions. The reference to Zieske fails to teach the distance between the first and second longitudinal axes as being adjustable, through a two-bracket scheme, employing a fastener and a plurality of elongated openings. Laubach teaches a distance adjusting system for a mount for a vehicle, including a first bracket (36) and a second bracket (34), both having a channel-shaped cross section, wherein the linkage between the brackets is adjustable through the use of first and second bolts (52, 54) extending through complimentary elongated openings (48, 48', 50, 50') and secured with nuts (56, 58) to allow lengthwise adjustment of the linkage. It would have been obvious to one of

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ordinary skill in the art at the time of the invention to make the offset between the longitudinal axes defined by Zieske adjustable as taught by Laubach, for example by replacing the central section (20, between 20a, and 20b) of the mount taught by Zieske with the dual bracket system taught by Laubach, for the purpose of allowing a more precise fit—for example so that a single adjustable bracket system may be used with a plurality of vehicles and tire sizes.

As regards the particular shape of the nut, both square and hex nuts are very well known in the fastening fields and as such it would have been obvious to one of ordinary skill in the art at the time of the invention to use a square nut in place of the hex nut taught by Laubach for the purpose of providing a nut having a greater surface area on its wrench-engaging portions.

As regards the particular surface area of the nut, it is well known in the fastening arts to adjust the engaging faces of fasteners to provide a desired clamping force on a particular piece of material, and it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the size of the nut to create a desired level of clamping of the two elements.

As regards the provision of the nut as having an overall base width substantially equal to the channel width (claims 8 and 9), inasmuch as it is known to provide accommodating recesses for nuts to hold them from turning while a fastener is tightened from the opposite side of the materials being connected, it would have been obvious to one of ordinary skill in the art at the time of the invention to size the nuts taught by Laubach to be substantially equal to the channel width of the brackets for the purpose of allowing the fastener assembly to be tightened from one side, thus obviating the use of a wrench to provide back-up force on the nut while tightening the fastener.

6. Claims 15, 16, 17, 19, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zieske in view of Laubach and Laribee (US 4,181,293). The references of Zieske and Laubach are discussed above and fail to teach the mating faces of the brackets (Laubach's 34 and 36) as having mating serrated faces on opposite sides of the elongated fastener receiving openings. Laribee teaches a bracket-to-bracket assembly including at least one threaded fastener assembly (31, 32)

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extending through elongated holes (22, 29) in a pair of brackets (13, 14), two sets of serrations (21, 30) are provided, each set being divided on opposite sides of the elongated openings to define two distinct sets of serrations in the region of the openings. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide mating serrated faces as taught by Laribee on mating faces of the two brackets of Zieske as modified by Laubach, for the purpose of insuring that a particular configuration of the two brackets is positively maintained.

As regards claim 19, the reference to Laribee teaches that each bracket portion (13, 14) has a plate-shaped face, and it would have been obvious to one of ordinary skill in the art at the time of the invention to make the mating brackets plate shaped to allow for slight offsets in the position of the bracket portions connected to the vehicle frame and fenders, and to prevent them from locking if slightly angularly misaligned.

7. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zieske in view of Laubach and Len'g'd. Kalinin Poly (SU 925,727). The references of Zieske and Laubach are discussed above and fail to teach a vibration decoupling connector between the fender and arm. Len'g'd. Kalinin Poly teach a fender (9, 11) having at least one vibration decoupling spring (22) connecting the fender (9, 11) to a mounting element (19). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a spring as taught by Len'g'd. Kalinin Poly to mount the fender to the arm of Zieske as modified by Laubach, for the purpose of reducing vibration in the assembly, and biasing it to a desired position.

#### **Allowable Subject Matter**

8. <sup>11, 12, as understood.</sup> Claims 18, 20-24, 28, 29, and 38-50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Federn (US 2,920,498), Burrell et al. (US 3,765,636), Scharf (US 4,406,474), Ciocan (US 4,417,741), Breen (US 5,048,781), Knoer (US 6,076,842),

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Hawes (US 6,471,228 and 6,484,984) and Daimler-Benz (GB 1,101,550) teach fender cover structures and other mechanical elements of pertinence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

  
1/15/04